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09/491,727	01/27/2000	David M. Austin	AUZ-001 P	8984

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EXAMINER	
ZIA, SYED	
ART UNIT	**PAPER NUMBER**
2431	
NOTIFICATION DATE	**DELIVERY MODE**
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptocorrespondence@austin-rapp.com

Office Action Summary	**Application No.** 09/491,727	**Applicant(s)** AUSTIN ET AL.
	Examiner SYED ZIA	**Art Unit** 2431

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 October 2009*.

2a)☒ This action is **FINAL**. 2b)□ This action is non-final.

3)□ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)□ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)□ Claim(s) _____ is/are objected to.

8)□ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)□ The specification is objected to by the Examiner.

10)□ The drawing(s) filed on _____ is/are: a)□ accepted or b)□ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)□ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)□ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)□ All b)□ Some * c)□ None of:

1.□ Certified copies of the priority documents have been received.

2.□ Certified copies of the priority documents have been received in Application No. _____.

3.□ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) □ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) □ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) □ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .
5) □ Notice of Informal Patent Application
6) □ Other: _____.

DETAILED ACTION

Response to Amendment

This office action is in response to amendments and remarks n filed on October 17, 2009. Claims 1-6 and 8-18 are pending for consideration.

Response to Arguments

Applicant's arguments filed on October 17, 2009 have been fully considered but they are not persuasive because of the following reasons:

Regarding Claims 1-6 and 8-18 applicants argued that the system of cited prior arts (CPA) [Togawa, Drake] does not teach, "outputting instructions that obtain the results and provide the results for a user and that prompt the user as to whether the countermeasure instructions should be executed." Togawa, alone or in combination with Drake, does not teach or suggest this subject matter".

This is not found persuasive. The system of cited prior art teaches a virus destroying system and method of computer software that involves using anti-spy techniques within the user system, which prevent or hamper eavesdropping on the ID-Data by destroying information stored in memory after receiving infected virus trigger information. The system of cited prior art teaches security of computer software, automatically detects tampering of software and code, reverse engineering, and disassembly, and also prevents executing tracing and debugging by use of code designed to detect and prevent these operations (Togawa: (col.5 line 39 to line 50, col.8

line 14 to line 40, col.13 line 8 to line 55, and col.14 line 8 to line 25, Drake:. col.3 line 38 to line 44, col.6 line 10 to line 65; and Watts: col.6 line 10 to line 12))

As a result, the system of cited prior arts does implement and teaches a system and method for detecting the presence of a computer program for monitoring a user's computer activities and countermeasures against such computer software.

Therefore, the examiner asserts that the system of cited prior arts does teach or suggest the subject matter recited in independent and subsequent dependent claims. Accordingly, rejections for Claims 1-6m and 8-18 are respectfully maintained.

Claim Rejections - 35 USC § 112

Previous rejection under e second paragraph of 35 U.S.C. 112 has been withdrawn

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

3. Claim 18 are rejected under 35 USC 101 since the claims are directed to non-statutory subject matter. Claim 18 are directed towards a service implemented in a machine-accessible and readable medium which appears to cover both transitory and non-transitory embodiments. The specification merely recites the term “computer readable medium, (i.e. useable medium)” (Page

8 and 14), but no specific definition is provided to define this claimed term. The United States Patent and Trademark Office (USPTO) is required to give claims their broadest reasonable interpretation consistent with the specification during proceedings before the USPTO. *See In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989) (during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow). The broadest reasonable interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media **and** transitory propagating signals *per se* in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent. *See* MPEP 2111.01. When the broadest reasonable interpretation of a claim covers a signal *per se*, the claim **must** be rejected under 35 U.S.C. § 101 as covering non-statutory subject matter. *See In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and *Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101*, Aug. 24, 2009; p. 2.

4. The Examiner suggests that the Applicant add the limitation “non-transitory machine-accessible and readable medium “to the claim(s) in order to properly render the claims in statutory form in view of their broadest reasonable interpretation in light of the originally filed specification. The examiner also suggests that the specification be amended to include the term “non-transitory machine-accessible and readable medium” to avoid a potential objection to the specification for a lack of antecedent basis of the claimed terminology.”

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-6, and 8-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Togawa (U. S. Patent 6,240,530).and further in view of Drake (U. S. Patent 6,006,328) and further in view of Watts (U. S. Patent No.: 6,240,530).

2. Regarding Claim 1, Togawa teaches a system for detecting the presence of an observing program on a computer system, (Fig.1-4), the system comprising:

observer data that includes data descriptive of an observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create log file from the observing of the observer program (col.5 line 7 to line 39); accessing instructions that access the observer data, comparing instructions that compare the observer data with memory data read in from memory to determine whether the observer program is present on the computer system (col.4 line 1 to line 22, col.8 line 14 to line 30); generating instructions that generate results from the comparing, wherein the results generated indicate whether the observer program is present on the computer system (col.5 line 10 to line 38, and col.8 line 22 to line 30); countermeasure instructions that alter the operation of the observer program; and outputting instructions that obtain the results and provide the results for a user and that prompt the user as to whether the countermeasure instructions should be executed (col.5 line 39 to line 50, col.8 line 14 to line 40, col.13 line 8 to line 55, and col.14 line 8 to line 25).

Although the system disclosed by Togawa shows all the features of the claimed limitation, but Togawa does not specifically disclose searching explicitly observer program as a part of that detecting and exterminating viruses on a computer. Togawa discloses a virus extermination program installed on the computer memory to detect, identify and destroy certain types of viruses on the computer (col.3 line 65 to col.4 line 24).

In an analogous art, Drake, on the other hand discloses computing environment that relates to method and apparatus that uses an anti-spy computer code to detect *rogue software* programs that eavesdrop, attack or steal ID-data on the computer. The anti-spy code continuously scans the computer memory by comparing its memory image data with known characteristics data to detect hot patching and temporarily disabling an observer program and using deception (col.3 line 38 to line 44, and col.6 line 10 to line 65).

Therefore, It would have been obvious to one ordinary skilled in the art at the time of invention to combine the teachings of Drake and Togawa, because Drake's method of detection and removal of computer spyware (malware or observer program) explicitly involves a comparison between known characteristics data with memory data to identify similar data patterns indicating the presence of rogue software in the computer. Therefore, the ordinarily skilled artisan would conclude that this combination would predictably result in running anti-spyware program on a computer to scan the memory for certain spy characteristics in order to detect the presence of rogue software programs thereon.

The system of Togawa and Drake does not explicitly teaches prompting user to start a counter measure (i.e. execution of security software), however Watts teach and describe to prompt the user as to whether the countermeasure instructions should be executed (col.6 line 10 to line 12) It would have been obvious to combine the prompting ability with the system of Togawa and Drake because a prompt interface will provide an improved control during detection of the presence of an observing program.

3. Regarding Claim 16, Togawa teaches a system for detecting the presence of an observing program on a computer system, ((Fig.1-4), the system, comprising:

a computer system comprising a processor, memory, a user input device and a monitor, wherein the memory comprises: observer data that includes data descriptive of an observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create log file from the observing of the observer program(col.5 line 7 to line 39); and means for accessing the observer data; means for generating results from the comparison(col.4 line 1 to line 22, col.8 line 14 to line 30), wherein the results generated indicate whether the observer program is present on the computer system(col.5 line 10 to line 38, and col.8 line 22 to line 30); means for altering the operation of the observer program; and means for outputting the results for a user and for prompting the user as to whether the countermeasure instructions should be executed; means for outputting the results for a user (col.5 line 39 to line 50, col.13 line 8 to line 55, and col.14 line 8 to line 25).

Although the system disclosed by Togawa shows all the features of the claimed limitation, but Togawa does not specifically disclose searching explicitly observer program as a part of that detecting and exterminating viruses on a computer. Togawa discloses a virus extermination program installed on the computer memory to detect, identify and destroy certain types of viruses on the computer (col.3 line 65 to col.4 line 24).

In an analogous art, Drake, on the other hand discloses computing environment that relates to method and apparatus that uses an anti-spy computer code to detect *rogue software* programs that eavesdrop, attack or steal ID-data on the computer. The anti-spy code continuously scans the computer memory by comparing its memory image data with known characteristics data to detect hot patching and temporarily disabling an observer program and using deception (col.3 line 38 to line 44, and col.6 line 10 to line 65,).

Therefore, It would have been obvious to one ordinary skilled in the art at the time of invention to combine the teachings of Drake and Togawa, because Drake's method of detection and removal of computer spyware (malware or observer program) explicitly involves a comparison between known characteristics data with memory data to identify similar data patterns indicating the presence of rogue software in the computer. Therefore, the ordinarily skilled artisan would conclude that this combination would predictably result in running anti-spyware program on a computer to scan the memory for certain spy characteristics in order to detect the presence of rogue software programs thereon.

The system of Togawa and Drake does not explicitly teaches prompting user to start a counter measure (i.e. execution of security software), however Watts teach and describe to prompt the user as to whether the countermeasure instructions should be executed (col.6 line 10 to line 12)

It would have been obvious to combine the prompting ability with the system of Togawa and Drake because a prompt interface will provide an improved control during detection of the presence of an observing program.

4. Regarding Claim 17, Togawa teaches a method for detecting the presence of an observing program on a computer system, wherein the observing program is programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and to create data from the observing on the computer system, the system including computer software fro running on the computer system ((Fig.1-4), the method comprising the steps of:

accessing observer data, the observer data including data descriptive of an observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create log file from the observing of the observer program (col.5 line 7 to line 39, and(col.4 line 1 to line 22, col.8 line 14 to line 30); generating results from the reading and comparing, wherein the results generated indicate whether the observer program is present on the computer system(col.5 line 10 to line 38, and col.8 line 22 to line 30); and outputting the results for a user and

prompting the user as to whether countermeasure instructions should be executed,

wherein the countermeasure instructions are executable to (1) temporarily disable the observer program, (2) permanently disable the observer program, and (3) create decoy observer created data but wherein the observer program continues running (col.5 line 39 to line 50, col.13 line 8 to line 55, and col.14 line 8 to line 25).

Although the system disclosed by Togawa shows all the features of the claimed limitation, but Togawa does not specifically disclose searching explicitly observer program as a part of that detecting and exterminating viruses on a computer. Togawa discloses a virus extermination program installed on the computer memory to detect, identify and destroy certain types of viruses on the computer (col.3 line 65 to col.4 line 24).

In an analogous art, Drake, on the other hand discloses computing environment that relates to method and apparatus that uses an anti-spy computer code to detect *rogue software* programs that eavesdrop, attack or steal ID-data on the computer. The anti-spy code continuously scans the computer memory by comparing its memory image data with known characteristics data to detect hot patching and temporarily disabling an observer program and using deception (col.3 line 38 to line 44, and col.6 line 10 to line 65).

Therefore, It would have been obvious to one ordinary skilled in the art at the time of invention to combine the teachings of Drake and Togawa, because Drake's method of detection and removal of computer spyware (malware or observer program) explicitly involves a comparison between known characteristics data with memory data to identify similar data patterns indicating the presence of rogue software in the computer. Therefore, the ordinarily skilled artisan would conclude that this combination would predictably result in running anti-spyware program on a computer to scan the memory for certain spy characteristics in order to detect the presence of rogue software programs thereon.

The system of Togawa and Drake does not explicitly teaches prompting user to start a counter measure (i.e. execution of security software), however Watts teach and describe to prompt the user as to whether the countermeasure instructions should be executed (col.6 line 10 to line 12) It would have been obvious to combine the prompting ability with the system of Togawa and Drake because a prompt interface will provide an improved control during detection of the presence of an observing program.

5. Regarding Claim 18, Togawa teaches a computer-readable medium containing instructions for detecting the presence of an observing program on a computer system, wherein the instructions are executable to ((Fig.1-4) comprised of the steps of:

access observer data, the observer data including data descriptive of an observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create log file from the observing of the observer program(col.5 line 7 to line 39, col.4 line 1 to line 22, col.8 line 14 to line 30); generate results from the reading and comparing, wherein the results generated indicate whether the observer program is present on the computer system; and

output the results for a user and prompt the user as to whether countermeasure instructions should be executed, wherein the countermeasure instructions are executable to (1) temporarily disable the observer program, (2) permanently disable the observer program, and (3) create decoy observer created data but wherein the observer program continues running (col.5 line 10 to line 38, and col.8 line 22 to line 30).

Although the system disclosed by Togawa shows all the features of the claimed limitation, but Togawa does not specifically disclose searching explicitly observer program as a part of that detecting and exterminating viruses on a computer. Togawa discloses a virus extermination program installed on the computer memory to detect, identify and destroy certain types of viruses on the computer (col.5 line 39 to line 50, col.13 line 8 to line 55, and col.14 line 8 to line 25).

In an analogous art, Drake, on the other hand discloses computing environment that relates to method and apparatus that uses an anti-spy computer code to detect *rogue software* programs that eavesdrop, attack or steal ID-data on the computer. The anti-spy code continuously scans the computer memory by comparing its memory image data with known characteristics data to detect hot patching and temporarily disabling an observer program and using deception (col.3 line 38 to line 44, and col.6 line 10 to line 65, and col. 19 line 10 to col.20 line 65).

Therefore, It would have been obvious to one ordinary skilled in the art at the time of invention to combine the teachings of Drake and Togawa, because Drake's method of detection and removal of computer spyware (malware or observer program) explicitly involves a comparison between known characteristics data with memory data to identify similar data patterns indicating the presence of rogue software in the computer. Therefore, the ordinarily skilled artisan would conclude that this combination would predictably result in running anti-spyware program on a computer to scan the memory for certain spy characteristics in order to detect the presence of rogue software programs thereon.

The system of Togawa and Drake does not explicitly teaches prompting user to start a counter measure (i.e. execution of security software), however Watts teach and describe to prompt the user as to whether the countermeasure instructions should be executed (col.6 line 10 to line 12)

It would have been obvious to combine the prompting ability with the system of Togawa and Drake because a prompt interface will provide an improved control during detection of the presence of an observing program.

6. Claims 2-6, and 8-15 are rejected applied as above rejecting Claim 1. Furthermore, the system of Togawa, and Drake teaches and describes, wherein,

As per Claim 2, the reading instructions read the memory of the computer system by querying the operating system of the computer system for the tasks running and by examining task information provided by the operating system (col.4 line 39 to line 57).

As per Claim 3 is rejected as above in rejecting claim 1, wherein the outputting instructions provide the results to a user through a graphical user interface (col.5 line 39 to line 50, col.13 line 8 to line 55, and col.14 line 8 to line 25).

As per Claim 4 is rejected as above in rejecting claim 1, wherein the reading instructions read the memory of the computer system by querying the file system of the computer system for the files located on storage media and by examining file information provided by the file system (col. 19 line 10 to col.20 line 65).

As per Claim 5 is rejected as above in rejecting claim 1, wherein the reading instructions read the memory of the computer system by opening a file located on storage media and by examining contents of the file (Togawa: col.19 line 10 to col.20 line 65).

As per Claim 6 is rejected as above in rejecting claim 1, wherein the observer data includes data descriptive of a plurality of observer programs and wherein the system compares the observer data with the memory data to determine whether any known observer program is present (Togawa: col.19 line 10 to col.20 line 65).

As per Claim 8 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by altering observer program configuration data (Togawa: col.19 line 10 to col.20 line 65).

As per Claim 9 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by altering a file on the computer system, and wherein the countermeasure instructions are executable to (1) temporarily disable the observer program, (2) permanently disable the observer program, and (3) create decoy observer created data but wherein the observer program continues running (Togawa: col.5 line 7 to line 39, col.13line 8 to line 56, and col.19 line 10 to col.20 line 65) and Drake teaches temporarily disabling an observer program and using deception (col.3 line 38 to line 44, and col.6 line 10 to line 65).

As per Claim 10 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by altering reporting data generated by the observer program (Togawa: col.5 line 7 to line 39, col.13line 8 to line 56, and col.19 line 10 to col.20 line 65).

As per Claim 11 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by replacing reporting data generated by the observer program but wherein the observer program continues running (Togawa: col.5 line 7 to line 39, col.13line 8 to line 56, and col.19 line 10 to col.20 line 65).

As per Claim 12 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by replacing a file of the observer program (Togawa: col.5 line 7 to line 39, col.13line 8 to line 56, and col.19 line 10 to col.20 line 65).

As per Claim 13 is rejected as above in rejecting claim 1, wherein the observer data includes data descriptive of observing activity typical of observing programs and wherein the system compares the observer data with the memory data to determine whether any known observer program is present (Togawa col.5 line 7 to line 39, col.4 line 1 to line 22, col.8 line 14 to line 30, col.13line 8 to line 56, and Drake: col.3 line 38 to line 44, and col.6 line 10 to line 31).

As per Claim 14 is rejected as above in rejecting claim 1, further comprising the observer data, wherein the observer data includes a list of files and modules that are part of the observer program software, and wherein the reading instructions read the memory of the computer system by querying the operating system of the computer system for the tasks running and by examining task information provided by the operating system, and wherein the reading instructions also read the memory of the computer system by querying the file system of the computer system for the files located on storage media and by examining file information provided by the file system, and wherein the outputting instructions provide the results to a user through a graphical user interface (Togawa: col.5 line 7 to line 39, col.4 line 1 to line 22, col.8 line 14 to line 30, col.13line 8 to line 56, and Drake: and Drake: col.3 line 38 to line 44, and col.6 line 10 to line 31).

As per Claim 15 is rejected as above in rejecting claim 1, wherein the system is made available over a computer network through a web site (Fig.15-17, col.29 line 40 to col.31 line 40).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SYED ZIA whose telephone number is (571)272-3798. The examiner can normally be reached on 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William R. Korzuch can be reached on 571-272-7589. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sz
August 27, 2010
/Syed Zia/
Primary Examiner, Art Unit 2431